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United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James B. Moran	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	03 C 412	DATE	3/4/2003
CASE TITLE	Rawinder Singh Pamma vs. John Ashcroft etc. et al.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

Memorandum Opinion and Order

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Enter Memorandum Opinion and Order. Petitioner's application to proceed in forma pauperis is granted.

- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	courtroom deputy's initials WAH	U.S. DISTRICT COURT CLERK 03 MAR - 4 PM 4:18 FILED Date/time received in central Clerk's Office	number of notices	Document Number 6
			MAR - 5 2003 date docketed	
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			mailing deputy initials	


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13 F.3d 1036, 1039 (7th Cir. 1994). We review the claim using the same standard as a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). Zimmerman v. Tribble, 266 F.3d 568, 571 (7th Cir. 2000).

Petitioner allegedly entered this country illegally and is subject to a final order of removal from the United States issued on January 3, 2000. On April 11, 2002, petitioner was allegedly taken into custody by the INS in order to facilitate his deportation to India. Petitioner alleges that his detention for this period of time is illegal for three reasons. First, he claims that 8 U.S.C. § 1231(a)(6), which allows detention of aliens subject to a deportation order does not allow a detention of this length. He argues that the Supreme Court, in Zadvydas v. Davis, 533 U.S. 678, 689 (2001), determined that such a detention must be limited to "a period reasonably necessary to bring about the alien's removal." Second, petitioner argues that the statute is unconstitutional on its face as a violation of his right to due process. Third, he claims that the statute is unconstitutional as applied to him. Plaintiff seeks his release from custody and declaratory relief stating that respondents are acting beyond the scope of their statutory power and in violation of the Constitution. Without reaching the merits of the case, we find that petitioner adequately states a claim for relief.

For the foregoing reasons, petitioner's application to proceed *in forma pauperis* is granted.

March 5, 2003.


JAMES B. MORAN
Senior Judge, U. S. District Court